

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C 20554

Jul 26 '96

In the Matter of

The application of Southwestern Bell
Telephone Company for Waiver of
Local Access and Transport Area
Boundaries to Provide Two-Way, Non-
Optional Expanded Local Calling Service

96-159

FEDERAL COMMUNICATIONS
COMMISSION
SECRETARY

PETITION

Southwestern Bell Telephone Company (SWBT), pursuant to Section 3(43) of the Telecommunications Act of 1996 (Act),¹ hereby makes application for a waiver of certain LATA area boundaries within the State of Texas to provide two-way, non-optional Expanded Local Calling Service (ELCS) to certain Texas exchanges. The reasons for this request are set out below

Texas telephone subscribers may petition the Public Utility Commission of Texas (TPUC) for ELCS, pursuant to TPUC SUBST. R. 23.49(c). Under this procedure, the petitioners must demonstrate a community of interest between the affected exchanges through an affirmative vote of at least 70 percent of those subscribers returning ballots.

In the case of this Petition, applications were filed to obtain ELCS among several exchanges. Following the balloting, the Texas PUC found that over 70 percent of the responding subscribers favored the proposed non-optional ELCS plan between (1) United/Centel's Pawnee exchange in the Corpus Christi LATA and SWBT's Kenedy and

¹ The Telecommunications Act of 1996, Pub. L. No. 104-104 § 3(43) (Feb. 8, 1996, to be codified at 47 U.S.C. § 153)("Act").

United/Centel's Pawnee exchange in the Corpus Christi LATA and SWBT's Kenedy and Karnes/Fall City exchanges in the San Antonio LATA, and (2) SWBT's Albany exchange in the Abilene LATA and SWBT's Breckenridge exchange in the Dallas LATA.³

The results of the balloting and the other evidence described in the Interim Orders of the Texas PUC demonstrate a sharing of educational, medical, employment and commercial affairs between the affected exchanges. On this basis, the TPUC determined that a community of interest exists between the petitioning exchanges and the exchanges located in other LATAs. Accordingly, the TPUC ordered SWBT to seek a waiver of the Modification of Final Judgment to permit SWBT to provide ELCS across LATA boundaries between these exchanges.

On August 24, 1982, the United States District Court for the District of Columbia entered the Modification of Final Judgment (Decree).⁴ The Decree required that AT&T divest itself of its Bell Operating Companies (BOCs) pursuant to a court approved Plan of Reorganization and imposed certain line of business restrictions on the BOCs. As approved by the court, the plan created seven regional holding companies and divided all of

² Interim Order, Petition for Expanded Local Calling Service from the Pawnee Exchange to the Kenedy and Karnes/Fall City Exchanges, TPUC Docket No. 13706, effective January 25, 1996, finding the existence of a community of interest and establishing a schedule for the filing of a request for waiver, a copy of which Order is attached as Exhibit A.

³ Interim Order, Petition for Expanded Local Calling Service from the Albany Exchange to the Breckenridge Exchange, TPUC Docket No. 15129, effective January 25, 1996, finding the existence of a community of interest and establishing a schedule for the filing of a request for waiver, a copy of which Order is attached hereto as Exhibit B.

⁴ United States v. Western Electric, 552 F. Supp. 131 (D.D.C. 1983).

Access and Transport Areas (LATAs).⁵ Pursuant to Sections VII and VIII(C), parties to the Decree could petition the court for a waiver and/or modification of LATA boundaries.

On February 8, 1996, the Telecommunications Act of 1996 was signed into law. The Act eliminated the prospective effect of the AT&T Consent Decree⁶ and conferred upon the Federal Communications Commission the authority to approve any LATA boundaries established or modified by the Bell Operating Companies after the date of enactment.⁷ In addition, the Act implicitly removed from the court responsible for administering the Decree the authority to grant waivers of the Decree, including those sought in this Petition.

Section 3(43) of the Act defines "Local Access and Transport Area" as, in pertinent part, a "contiguous geographic area established or modified by a Bell Operating Company after such date of enactment [of The Telecommunications Act of 1996] and approved by the Commission [emphasis added]." SWBT is therefore requesting the Commission, pursuant to Section 3(43) of The Telecommunications Act of 1996, to waive the LATA area boundaries of the affected exchanges, solely for purposes of these ELCS routes, such that SWBT may comply with the order of the Texas PUC and deem these cross-LATA routes "local" calling service.

1. United/Centel's Pawnee Exchange in the Corpus Christi LATA and SWBT's Kennedy and Karnes/Fall City Exchanges in the San Antonio LATA.

⁵ See United States v. Western Electric, 569 F. Supp. 990 (D.D.C. 1983), which approves the LATA area boundaries proposed in the Plan of Reorganization.

⁶ Act, Section 601(a)(1).

⁷ Id., Section 3(43).

SWBT requests approval by the Commission to provide two-way, non-optional ELCS between United/Centel's Pawnee exchange in the Corpus Christi LATA and SWBT's Kennedy and Karnes/Fall City exchanges in the San Antonio LATA. The TPUC has determined that a community of interest exists between the petitioning exchanges and the exchanges located in the other LATAs, and has ordered SWBT to provide ELCS across the LATA boundaries.

2. SWBT's Albany Exchange in the Abilene LATA and SWBT's Breckenridge Exchange in the Dallas LATA

SWBT requests approval by the Commission to provide two-way, non-optional ELCS between SWBT's Albany exchange in the Abilene LATA and SWBT's Breckenridge exchange in the Dallas LATA. The TPUC has determined that a community of interest exists between the petitioning exchanges and the exchanges located in the other LATAs, and has ordered SWBT to provide ELCS across the LATA boundaries.

This application is in the public interest of the citizens residing in the affected exchanges. Further, this ELCS proposal involves a limited number of subscribers, because the Texas law allows petitions to be filed only for exchanges involving 10,000 subscribers or less. SWBT makes this application solely to provide ELCS to the affected exchanges, and for no other purpose.

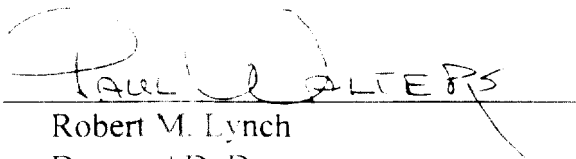
Wherefore, SWBT requests that the Commission approve the attached orders and grant a waiver of the affected LATA boundaries solely so that SWBT may provide local calling service between and among the affected exchanges.

Wherefore, SWBT requests that the Commission approve the attached orders and grant a waiver of the affected LATA boundaries solely so that SWBT may provide local calling service between and among the affected exchanges.

Respectfully submitted.

SOUTHWESTERN BELL TELEPHONE COMPANY

By

A handwritten signature in dark ink, appearing to read "PAUL WALTERS", is written over a horizontal line.

Robert M. Lynch
Durward D. Dupre
J. Paul Walters, Jr.

Attorneys for
Southwestern Bell Telephone Company

One Bell Center, Room 3520
St. Louis, Missouri 63101
(314) 235-2507

June 25, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

The application of Southwestern Bell
Telephone Company for Waiver of
of Local Access and Transport Area
Boundaries to Provide Two-Way, Non-
Optional Expanded Local Calling Service

ORDER

Upon consideration of the petition filed by Southwestern Bell Telephone Company on _____, 1996 to permit Southwestern Bell Telephone Company to provide two-way, non-optional Expanded Local Calling Service between United/Centel's Pawnee exchange in the Corpus Christi LATA and SWBT's Kenedy and Karnes/Fall City exchanges in the San Antonio LATA, and noting no objection thereto, it is hereby

ORDERED that the petition is granted and that Southwestern Bell Telephone Company may provide two-way, non-optional Expanded Local Calling Service across a LATA boundary between United/Centel's Pawnee exchange in the Corpus Christi LATA and SWBT's Kenedy and Karnes/Fall City exchange in the San Antonio LATA.

Federal Communications Commission

Dated: _____

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C 20554

In the Matter of

The application of Southwestern Bell
Telephone Company for Waiver of
of Local Access and Transport Area
Boundaries to Provide Two-Way, Non-
Optional Expanded Local Calling Service

ORDER

Upon consideration of the petition filed by Southwestern Bell Telephone Company on _____, 1996 to permit Southwestern Bell Telephone Company to provide two-way, non-optional Expanded Local Calling Service between SWBT's Albany exchange in the Abilene LATA and SWBT's Breckenridge exchange in the Dallas LATA, and noting no objection thereto, it is hereby

ORDERED that the petition is granted and that Southwestern Bell Telephone Company may provide two-way, non-optional Expanded Local Calling Service across a LATA boundary between SWBT's Albany exchange in the Abilene LATA and SWBT's Breckenridge exchange in the Dallas LATA.

Federal Communications Commission

Dated: _____

CONSOLIDATED ORDER

§
§ PUBLIC UTILITY COMMISSION
§
§ OF TEXAS
§

- DOCKET NO. 13543 *Petition for Expanded Local Calling Service from the Normangee Exchange to the Bryan-College Station Exchange*
- DOCKET NO. 13706 *Petition for Expanded Local Calling Service from the Pawnee Exchange to the Kenedy and Karnes/Falls City Exchanges*
- DOCKET NO. 13958 *Application of Panhandle Telephone Cooperative, Inc. for Exemption from Requirements in P.U.C. SUBST. R. 23.48(e) Regarding Preparation and Maintenance of Emergency Operations Plan*
- DOCKET NO. 14484 *Application of Brazos Electric Power Cooperative, Inc. to Amend Certificate of Convenience and Necessity for a Proposed Transmission Line within Ellis County*
- DOCKET NO. 14742 *Application of Southwestern Bell Telephone Company to Amend Certificate of Convenience and Necessity within DeWitt and Lavaca Counties*
- DOCKET NO. 14838 *Application of Southwestern Bell Telephone Company to Amend Certificate of Convenience and Necessity within Ector County*
- DOCKET NO. 14843 *Application of Border to Border Communications, Inc. to Amend Certificate of Convenience and Necessity within Zapata County*
- DOCKET NO. 14985 *Petition of Texas Utilities Electric Company for Authority to Refund an Over-Collection of Fuel Cost Revenues*
- DOCKET NO. 15051 *Application of Texas Comm South, Inc. for a Service Provider Certificate of Operating Authority within Texas*

DOCKET NO. 15129

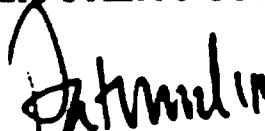
*Petition for Expanded Local Calling Service from the Albany
Exchange to the Breckenridge Exchange*

CONSOLIDATED ORDER

The Commission adopts the attached findings of fact and conclusions of law and issues the orders set out therein

SIGNED AT AUSTIN, TEXAS on the 25th day of January 1996.

PUBLIC UTILITY COMMISSION OF TEXAS



PAT WOOD III, CHAIRMAN



ROBERT W. GEE, COMMISSIONER



JUDY WALSH, COMMISSIONER

ATTEST:



PAULA MUELLER
SECRETARY OF THE COMMISSION

DOCKET NO. 13706

**PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
PAWNEE EXCHANGE TO THE KENEDY
AND KARNES-FALLS CITY EXCHANGES**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

INTERIM ORDER

The Public Utility Commission of Texas (Commission) finds that this docket has been processed in accordance with applicable statutes and Commission rules. There were no disputed issues in this petition.

The following findings of fact and conclusions of law are adopted:

Findings of Fact

Background

1. The expanded toll-free local calling service (ELCS) petition that is the subject of this Interim Order requests non-optional "to and from calling" between the Pawnee Exchange and Kenedy and Karnes-Falls City Exchanges.
2. The processes for petitioning and balloting included notice that the service would have a fee of up to \$3.50 for residential and \$7.00 for business customers per month on a non-optional basis.
3. Judge Harold H. Greene established the local access transport area (LATA) boundaries for Southwestern Bell Telephone Company (SWB) in the Modified Final Judgment, *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) and *United States v. Western Elec. Co., Inc.*, 569 F.Supp. 990 (D.D.C. 1983), and for GTE Southwest, Inc. and Contel of Texas, Inc. (collectively GTE) in the Decree, *United States v. GTE Corp.*, 1985-1 Trade Cas (CCH) § 66,355 (D.D.C. 1985). (The collective orders of Judge Greene will hereinafter be referred to as MFJ.)

4 A LATA is a geographic area in which SWB and GTE can provide telecommunication services within its boundaries. In the MFJ, Judge Greene restricted the two local exchange carriers from providing interLATA transport. In order for the companies to span the LATA boundaries established by the MFJ, they must obtain a waiver from Judge Greene.

5 Judge Greene has relied upon the following issues for SWB or GTE to obtain a waiver of the MFJ impact on competition, whether the calling plan has the attributes of a long distance toll call, and whether a community of interest exists between the two exchanges.

6 On October 19, 1993, the Commission amended P.U.C. SUBST. R. 23.49 by adding a section pertaining to ELCS in accordance with Senate Bill 632, (Acts of May 11, 1993, 73rd Leg. R.S., ch. 271, 1993 Tex. Sess. Law Serv. 1276 (Vernon)) (to be codified as an amendment to Tex. Rev. Civ. Stat. Ann., art. 1446c, § 93A) and § 93A of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1994). The rule became effective on December 7, 1993.

7 The statute and rule referred to in Finding of Fact No. 6 provide certain requirements for petitioning exchanges to meet in order to receive ELCS. One such requirement is a showing of a community of interest.

8 In recommending approval of various waivers before Judge Greene, the Department of Justice (DOJ) has relied upon an affirmative finding of the Public Utility Commission of Texas that a community of interest exists between two exchanges, often based on a vote of the responding subscribers and whether the two exchanges share such needs as local governments, employment, shopping, and use of educational and medical services.

9. An affirmative vote of 70 percent of the subscribers responding to the ballot is necessary for an ELCS petition to proceed at the Commission. The percentage of affirmative votes from those subscribers returning ballots is a compelling showing of a community of interest. This factor can and should be considered with the same weight as other factors, such as the sharing of local government, schools, employment, and commercial centers.

Community of Interest Issues

10 On August 4, 1994, the Pawnee Exchange filed a petition for ELCS between it and the Kenedy and Karnes-Falls City Exchanges, among others

11 The Pawnee Exchange is served by SWB, and it is in the Corpus Christi LATA. The Kenedy and Karnes-Falls City Exchanges are also served by SWB, but are in the San Antonio LATA.

12 The parties to the proceeding are the petitioning Pawnee Exchange, SWB, and General Counsel. A hearing on the merits was not held because there are no contested issues. There is no statutory deadline for this proceeding.

13 The Pawnee Exchange is contiguous with the Kenedy Exchange and is within 22 miles of the Karnes-Falls City Exchange.

14 An affirmative vote of over 70 percent of those subscribers voting in the balloting favored expanding the local calling scope from the Pawnee Exchange to the Kenedy and Karnes-Falls City Exchanges.

15 Shopping, groceries, banking, and legal services are not available in Pawnee. Kenedy is the closest town from which the residents of the Pawnee Exchange can obtain such services.

16 Pawnee is located in the same school districts as the Kenedy and Karnes-Falls City Exchanges.

17 Pawnee does not have any emergency services. All ambulance, fire, and sheriff services are provided by the Karnes-Falls City Exchange.

18 The Pawnee Exchange is served by physicians, pharmacies, funeral services, and the hospital located in the Kenedy and Karnes-Falls City Exchanges.

- 19 Citizens of the Pawnee Exchange rely upon churches located in the Karnes-Falls City Exchange
- 20 The local water company that provides water to the Pawnee Exchange is located in the Karnes-Falls City Exchange

Findings

21 There is a community of interest between the Pawnee Exchange and the Kenedy Exchange. The exchanges are contiguous to each other. In addition, the petitioners proved a community of interest with the Kenedy Exchange in the following ways: affirmative vote of the subscribers returning ballots, common utilization as a commercial center and financial center, common reliance upon hospital and medical providers, and common school districts.

22 There is a community of interest between the Pawnee Exchange and the Karnes-Falls City Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Karnes-Falls City Exchange in the following ways: affirmative vote of the subscribers returning ballots; common utilization as a commercial, financial, emergency, and religious center; common reliance upon hospital and medical providers; and common school districts.

Informal Disposition

- 23 More than 30 days have passed since completion of the notice provided in this docket.
- 24 No protests, motions to intervene, or requests for hearing have been filed. No issues of fact or law are disputed by any party; therefore, no hearing is necessary.

Conclusions of Law

- 1 The Commission has jurisdiction in this proceeding pursuant to the Public Utility Regulatory Act of 1995 (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c-0, §§ 1.101, 3.051, 3.151, 3.155, 2.201, 3.251, and 3.304 (Vernon Supp. 1995).
- 2 The standards for community of interest for ELCS in Texas are established in § 3.304(a)(2) of PURA and in P.U.C. SUBST. R. 23.49(c)(3).
- 3 Pursuant to P.U.C. SUBST. R. 23.49(c)(11), ELCS petitions filed prior to the adoption of P.U.C. SUBST. R. 23.49(c) must satisfy the criteria contained within the rule.
- 4 To meet the community of interest standard, P.U.C. SUBST. R. 23.49(c)(3)(B) and § 3.304(a)(2) of PURA require a petitioning exchange to have either a contiguous boundary with the petitioned exchange or require the exchanges covered by the petition to be within a distance of 22 miles of each other. As established in Finding of Fact No. 13, the petitioning exchange satisfies the requirement.
- 5 P.U.C. SUBST. R. 23.49(c)(3)(C) provides that if the exchanges are greater than 22 miles apart, but less than 50 miles, the petitioners must show a community of interest through schools, hospitals, local governments, business centers, or other relationships so that, without ELCS, a hardship on the residents of the petitioning exchange would occur.
- 6 An ELCS proceeding that has two exchanges within 22 miles of each other or which are contiguous to each other constitutes a *per se* showing of community of interest. Judge Greene requires, however, a greater showing of community of interest in order to grant a waiver of the MFJ; thus, the Commission shall address additional findings of a community of interest between the exchanges in this type of proceeding.

- 7 A community of interest standard similar to P U C SUBST R 23 49(b)(2) is not applicable to proceedings involving ELCS
- 8 The standards contained within § 3 304(a)(2) of PURA and P U C SUBST R 23 49(c)(3)(B) apply to both contested and uncontested ELCS proceedings.
- 9 P U C SUBST R 23 49(c)(5)(D)(ii) and § 3 304 of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to establish a community of interest. The statute and rule do not require an affirmative vote of at least 70 percent of all subscribers in the exchange
- 10 This petition does not constitute a major rate proceeding as defined by P U C PROC R 22 2
- 11 The requirements for informal disposition under P U C PROC R 22.35 have been satisfied in this proceeding.

In accordance with the findings of fact and conclusions of law, the Commission issues the following Interim Order:

1. A community of interest exists between the petitioning Pawnee Exchange and the petitioned Kenedy and Karnes-Falls City Exchanges.
2. Within thirty (30) days of the date this Interim Order is signed, Southwestern Bell Telephone Company (SWB) is directed to file a request for a waiver of the Modified Final Judgment with the Department of Justice or Judge Harold H. Greene, as appropriate.
3. Within thirty (30) days of the receipt of the ruling by Judge Greene, SWB is directed to file Judge Greene's judgment in this proceeding

DOCKET NO. 15129

**PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
ALBANY EXCHANGE TO THE
BRECKENRIDGE EXCHANGE**

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§
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§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

INTERIM ORDER

The Public Utility Commission of Texas (Commission) finds that this docket has been processed in accordance with applicable statutes and Commission rules. There were no disputed issues in this petition.

The following findings of fact and conclusions of law are adopted:

Findings of Fact

Background

1. The expanded toll-free local calling service (ELCS) petition that is the subject of this Interim Order requests non-optional "to and from calling" between the Albany and Breckenridge Exchanges.
2. The processes for petitioning and balloting included notice that the service would have a fee of up to \$3.50 for residential and \$7.00 for business customers per month on a non-optional basis.
3. Judge Harold H. Greene established the local access transport area (LATA) boundaries for Southwestern Bell Telephone Company (SWB) in the Modified Final Judgment, *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) and *United States v. Western Elec. Co., Inc.*, 569 F.Supp. 990 (D.D.C. 1983), and for GTE Southwest, Inc. and Contel of Texas, Inc. (collectively GTE) in the Decree, *United States v. GTE Corp.*, 1985-1 Trade Cas (CCH) § 66,355 (D.D.C. 1985). (The collective orders of Judge Greene will hereinafter be referred to as MFJ.)

4. A LATA is a geographic area in which SWB and GTE can provide telecommunication services within its boundaries. In the MFJ, Judge Greene restricted the two local exchange carriers from providing interLATA transport. In order for the companies to span the LATA boundaries established by the MFJ, they must obtain a waiver from Judge Greene.

5. Judge Greene has relied upon the following issues for SWB or GTE to obtain a waiver of the MFJ: impact on competition; whether the calling plan has the attributes of a long distance toll call; and whether a community of interest exists between the two exchanges.

6. On October 19, 1993, the Commission amended P.U.C. SUBST. R. 23.49 by adding a section pertaining to ELCS in accordance with Senate Bill 632, (Acts of May 11, 1993, 73rd Leg. R.S., ch. 271, 1993 Tex. Sess. Law Serv. 1276 (Vernon) (to be codified as an amendment to Tex. Rev. Civ. Stat. Ann., art. 1446c, § 93A) and § 93A of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1994). The rule became effective on December 7, 1993.

7. The statute and rule referred to in Finding of Fact No. 6 provide certain requirements for petitioning exchanges to meet in order to receive ELCS. One such requirement is a showing of a community of interest.

8. In recommending approval of various waivers before Judge Greene, the Department of Justice (DOJ) has relied upon an affirmative finding of the Public Utility Commission of Texas that a community of interest exists, often based on a vote of the responding subscribers and whether the two exchanges share such needs as local governments; employment; shopping; and use of educational and medical services.

9. The Commission contemplated interLATA waivers in adopting P.U.C. SUBST. R. 23.49(c); thus, it was aware of issues relating to the implications of an interLATA boundary application when adopting the rule.

10. An affirmative vote of 70 percent of the subscribers responding to the ballot is necessary for an ELCS petition to proceed at the Commission. The percentage of affirmative votes from those subscribers returning ballots is a compelling showing of a community of interest. This factor can and should be considered with the same weight as other factors, such as the sharing of local government, schools, employment, and commercial centers.

Community of Interest Issues

11. On January 31, 1995, the Albany Exchange filed a petition for ELCS between it and various exchanges, including the Breckenridge Exchange. On October 16, 1995, the Administrative Law Judge (ALJ) issued Order No. 3 in Docket No. 14395 in which the petition was dismissed for failure to prove that a community of interest exists between the two exchanges. On October 31, 1995, the Albany Exchange filed additional evidence, which has been considered by the ALJ. Based upon the additional evidence presented, the ALJ instituted this docket to address the requested service.

12. The Albany Exchange is served by SWB, and it is in the Abilene LATA. The Breckenridge Exchange is also served by SWB, but it is in the Dallas LATA.

13. The parties to the proceeding are the petitioning Albany Exchange, SWB, and General Counsel. A hearing on the merits was not held because there are no contested issues. There is no statutory deadline for this proceeding.

14. The Albany Exchange is contiguous to the Breckenridge Exchange.

15. An affirmative vote of over 70 percent of those subscribers voting in the balloting favored expanding the local calling scope of the Albany Exchange to the Breckenridge Exchange.

16. The town of Albany's population is less than 2,000. Albany is the county seat of Shackelford County, in which the population is less than 3,000.

17 Breckenridge is the county seat of Stephens County. Many of the residents of the Albany Exchange rely upon farming, ranching, and the oil industry for their economic basis. These residents own property that span both of the counties; thus, there are common local governmental needs. In addition, several of the State and Federal agencies that serve both counties are located in Breckenridge.

18. The Breckenridge Exchange also provides employment opportunities for the citizens of the Albany Exchange. Many of the residents of the Albany Exchange seek employment in Breckenridge at such locations as the state prison, Breckenridge schools, manufacturing plants, and commercial stores.

19. Residents of the Albany Exchange also depend upon businesses in the Breckenridge Exchange for their shopping needs. Breckenridge is the closest town of its size, and the residents rely upon the stores for clothing, medicine, and farm and ranching goods.

20. Many residents of the Albany Exchange rely upon doctors and medical facilities in the Breckenridge Exchange.

Findings

21. There is a community of interest between the Albany Exchange and the Breckenridge Exchange. The exchanges are contiguous to each other. In addition, the petitioners proved a community of interest with the Breckenridge Exchange in the following ways: affirmative vote of the subscribers returning ballots; commonality as a commercial, employment, and medical center, and commonality of governmental functions.

Informal Disposition

22. More than 30 days have passed since completion of the notice provided in this docket.

23. No protests, motions to intervene, or requests for hearing have been filed. No issues of fact or law are disputed by any party; therefore, no hearing is necessary.

Conclusions of Law

1. The Commission has jurisdiction in this proceeding pursuant to the Public Utility Regulatory Act of 1995 (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c-0, §§ 1.101, 3.051, 3.151, 3.155, 2.201, 3.251, and 3.304 (Vernon Supp. 1995)
2. The standards for community of interest for ELCS in Texas are established in § 3.304(a)(2) of PURA and in P.U.C. SUBST. R. 23.49(c)(3).
3. Pursuant to P.U.C. SUBST. R. 23.49(c)(11), ELCS petitions filed prior to the adoption of P.U.C. SUBST. R. 23.49(c) must satisfy the criteria contained within the rule.
4. To meet the community of interest standard, P.U.C. SUBST. R. 23.49(c)(3)(B) and § 3.304(a)(2) of PURA require a petitioning exchange to have either a contiguous boundary with the petitioned exchange or require the exchanges covered by the petition to be within a distance of 22 miles of each other. As established in Finding of Fact No. 14, the petitioning exchange satisfies the requirement.
5. P.U.C. SUBST. R. 23.49(c)(3)(C) provides that if the exchanges are greater than 22 miles apart, but less than 50 miles, the petitioners must show a community of interest through schools, hospitals, local governments, business centers, or other relationships so that, without ELCS, a hardship on the residents of the petitioning exchange would occur.
6. An ELCS proceeding that has two exchanges within 22 miles of each other or which are contiguous to each other constitutes a *per se* showing of community of interest. Judge Greene requires, however, a greater showing of community of interest in order to grant a waiver of the MFJ; thus, the Commission shall address additional findings of a community of interest between the exchanges in this type of proceeding.

7. A community of interest standard similar to P U C SUBST. R. 23 49(b)(2) is not applicable to proceedings involving ELCS
8. The standards contained within § 3 304(a)(2) of PURA and P U C. SUBST R. 23 49(c)(3)(B) apply to both contested and uncontested ELCS proceedings
9. P U C. SUBST R. 23 49(c)(5)(D)(ii) and § 3 304 of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to establish a community of interest. The statute and rule do not require an affirmative vote of at least 70 percent of all subscribers in the exchange.
10. This petition does not constitute a major rate proceeding as defined by P U.C. PROC. R. 22.2.
11. The requirements for informal disposition under P U.C. PROC. R. 22.35 have been satisfied in this proceeding.

In accordance with the findings of fact and conclusions of law, the Commission issues the following Interim Order:

1. A community of interest exists between the petitioning Albany Exchange and the petitioned Breckenridge Exchange
2. Within thirty (30) days of the date this Interim Order is signed, Southwestern Bell Telephone Company (SWB) is directed to file a request for a waiver of the Modified Final Judgment with the Department of Justice or Judge Harold H. Greene, as appropriate.
3. Within thirty (30) days of the receipt of the ruling by Judge Greene, SWB is directed to file Judge Greene's judgment in this proceeding.

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "Petition, In the Matter of The application of Southwestern Bell Telephone Company for Wavier of Local Access and Transport Area Boundaries to Provide Two-Way, Non-Optional Expanded Local Calling Service" has been filed this 25th day of June, 1996 to the Parties of Record.

A handwritten signature in cursive script that reads "Katie M. Turner". The signature is written in dark ink and is positioned above the printed name.

Katie M. Turner

June 25, 1996

ITS INC
1919 M ST NW
RM 246
WASHINGTON DC 20554